UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	**CHAPTER 11**
	§	
MONTCO OFFSHORE, INC., et al	§	**CASE NO. 17-31646**
	§	
	§	**JUDGE ISGUR**
	§	
DEBTOR	§	**JOINTLY ADMINISTERED**

OBJECTION OF ODYSSEA MARINE, INC. TO DEBTORS' EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO OBTAIN POSTPETITION SUPERPRIORITY SECURED FINANCING FROM JPMORGAN CHASE BANK, N.A., (II) AUTHORIZING USE OF CASH COLLATERAL, (III) GRANTING ADEQUATE PROTECTION, (IV) SCHEDULING FINAL HEARING, AND (IV) GRANTING CERTAIN RELATED RELIEF
[Relates to Docket No. 166 (Debtor's Emergency Motion)]

TO THE HONORABLE MARVIN J. ISGUR:

Odyssea Marine, Inc. ("**Odyssea**")[1] appearing herein solely for the purposes of filing this Objection to Emergency Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Superpriority Secured Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Adequate Protection, (IV) Scheduling a Final Hearing, and (V) Granting Certain Related Relief (the "**DIP Financing Motion**") (Docket No. 166) as follows:

BACKGROUND

1. Prior to the filing of the bankruptcy proceedings of Montco Offshore, Inc. ("**MO**") and Montco Offshore Contractors, LLC ("**MOC**")(collectively, "**Debtors**"), Odyssea provided pre-petition services for the Debtors' operation and has statutory liens on property owned by the Debtors arising therefrom, including but not limited to liens arising under the

[11] Odyssea, by the filing of this Limited Objection does not consent to the jurisdiction of this Court or to the entry of any final order by this Court as it relates to the claims of Odyssea.

Federal Maritime Lien Act, 46 U.S.C. § 31341 *et seq.* Odyssea's liens and/or privileges under 46 U.S.C. § 31341 *et seq., et seq.* secure certain obligations summarized as follows:

a. Odyssea provided essential services necessary to the operation of the L/B ROBERT and L/B JILL, vessels owned by the Debtors. In connection with the aforesaid services, there is presently due and owing Odyssea Marine, Inc. by the Debtors the aggregate principal sum of $1,101,699.58, plus interest and associated costs and penalties.

2. On March 6, 2017, Odyssea filed a Verified Amended Complaint against the L/B ROBERT, her engines, tackle, appurtenances, equipment, etc., and the L/B JILL, her engines, tackle, appurtenances, equipment, etc., *in rem*, (collectively, the "**Vessels**"), and both above-referenced Debtors, *in personam*, in the United States District Court for the Eastern District of Louisiana (the "**District Court**"), Civil Action No. 2:17-cv-01921-JCZ-KWR (the "**District Court Action**").

3. On March 8, 2017, the District Court issued Warrants of Arrest with respect to both Vessels.

4. On March 8, 2017, Odyssea and the Debtors executed a Substitute Security Agreement, in which the Parties agreed, *inter alia*, as follows:

a. Odyssea shall refrain in perpetuity from arresting, seizing, attaching or levying the L/B ROBERT to enforce the maritime liens described in the Complaint against the L/B ROBERT, and will not file a Notice of Claim of Lien with the National Vessel Documentation Center against the L/B ROBERT.
b. MOC shall pay $100,000.00 by wire to Odyssea no later than the close of business on March 9, 2017. This amount shall be applied to discharge in part the sums claimed by Odyssea in the Complaint.
c. The Parties agree that the L/B JILL shall stand as security not only for the maritime liens asserted by Odyssea against that vessel, but also as substitute security for the lien claims described in the Complaint against the L/B ROBERT.
d. Odyssea shall proceed with the arrest of the L/B JILL, and MO agrees that Odyssea may appoint the masters of that vessel as her consent keepers. MO Shall cooperate with Odyssea in supplying proof of insurance if such is requested by the United States Marshal.

e. Odyssea agrees that while the L/B JILL is in *custodia legis*, MO may conduct cargo and repair operations to that vessel.
f. MO shall not file a wrongful arrest claim against Odyssea.

5. The L/B ROBERT has not been seized and is currently offshore working in the Gulf of Mexico.

6. On March 14, 2017, the United States Marshal for the Eastern District of Louisiana arrested the L/B JILL at Port Fourchon, Louisiana, where it remains in custody of a Consent Keeper.

7. On March 17, 2017 (the "**Petition Date**"), the Debtors filed voluntary petitions under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas. The cases are being jointly administered in Case No. 17-31646.

8. On April 28, 2017, the Debtors filed the DIP Financing Motion seeking, inter alia, DIP financing up to $30.0 million.

OBJECTION

9. Odyssea seeks to ensure that any DIP financing order (and any other order entered pursuant to the DIP Financing Motion) includes language which (i) preserves valid liens and/or privileges held by Odyssea so that it may be addressed by a Court of competent jurisdiction and not lost prior to such consideration through the entry of the DIP financing orders and (ii) provides, to the extent required by law, Odyssea with adequate protection.

10. This Emergency Motion was filed on April 28, 2016, noticed for hearing for May 2, 2017, giving one full business day to review, analyze and consider to file an objection thereto on that same expedited timeline. This proposed transaction which carries with it such significant

provisions requires sufficient time to respond to same which one day notice does not achieve that.

11. Upon review of the DIP Financing Motion; the Proposed Interim Order (I) Authorizing Debtors to Obtain Postpetition Superpriority Secured Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Adequate Protection, (IV) Scheduling a Final Hearing, and (V) Granting Certain Related Relief ("**Proposed Interim Financing Order**"); and the Emergency Debtor-in-Possession Credit Agreement ("**Proposed DIP Credit Agreement**"), provides for grants of adequate protection and priming liens in favor of the DIP Lenders and further it states that the lien created by the DIP Financing Motion are subordinate to "Permitted Liens,"[2] however, "Permitted Liens" is not defined. Furthermore, the Proposed DIP Credit Agreement, appears to state that the DIP liens are junior "on all assets, now or hereafter acquired and all proceeds thereof, of the Loan Parties that are subject to a lien…" The language is not clear in that it may suggest both that statutory liens that are perfected as permitted by Section 546(b) that are senior to the liens securing the Prepetition Credit Agreement, and that all statutory liens not filed prior to the petition date, are subordinated to the requested DIP Liens (thus, excluding both first position statutory liens and all statutory liens filed post-petition pursuant to 546(b)).

12. Further, the DIP Financing Motion proposes to provide interim financing of $30.0 Million with no less than $3,150,000, being used to repay all borrowings under the Emergency DIP Obligations [Doc. 68] and $15,000,000.00 being used to Roll Up an equal amount of the Pre-Petition Obligations owed to DIP Lender and granting to the DIP Lenders, Super-Priority Claims over all pre-petition and post-petition property of the Debtors subject

[2] See DIP Financing Motion at pp. 12-13; Proposed Interim Financing Order at p. 14; and Proposed DIP Credit Agreement, Section 2.23 at p. 15.

only to the carve out, Replacement Liens as adequate protection and Priming Liens on all of the Pre-Petition Collateral.

13. Finally, the DIP Financing Motion proposes to waive Equities of the Case and Marshalling of Assets. Accordingly, to the extent applicable, Odyssea objects to the DIP Financing Motion on the following grounds:

a. To the extent that the proposed order includes "priming" or *parri passu* liens or security interests on property on which Odyssea holds a valid lien and/or privilege same should not be granted on an interim basis.

b. To the extent that the proposed order includes "priming" or *parri passu* liens or security interests on property on which Odyssea holds a valid lien and/or privilege absent a finding that Odyssea is adequately protected. *See 11 U .S.C. §§* 364(c) and (d)(1)(B).

c. To the extent that no adequate protection is provided for the use of cash collateral on which Odyssea holds a valid lien and/or privilege. *See 11 U .S.C. §* 363(e).

d. To the extent that pre-petition debt is being converted into post-petition debt secured by priming liens and a super-priority administrative expense claims.

e. To the extent that the pre-petition lenders are granted cross-collateralization protection (other than replacement liens or adequate protection)
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f. To the extent that the final DIP financing order does not have language reserving the right of statutory lien creditors such as Odyssea to seek a determination with regard to the validity and priority of their liens vis-à-vis both the pre-petition lenders and the DIP lenders.

g. To the extent that the proposed order grants a roll up of an equal amount of pre-petition debt which includes "priming" language to be granted at this interim hearing;

h. To the extent that the waiver of the equities of the case doctrine and marshalling of assets affects Odyssea's claims and rights in this case.

i. Payment of professional fees and expenses. There is no explanation as to what fees and expenses are included, provided and to be paid.

With regard to objections above, Odyssea does not consent to the granting of "priming" *or parri passu* liens or security interests on property subject to the liens and/or privileges of

Odyssea, or to the use of cash collateral subject to the liens and/or privileges of Odyssea unless Odyssea is provided adequate protection of its respective interest as required by law.

14. Odyssea further objects to the proposed DIP Financing Motion to the extent that it alters the priority scheme under the Bankruptcy Code is violative of the recent ruling in 15-659 *Czyzewski v. Jevic Holding Corp., et al* (March 22, 2017) United States Supreme Court.

15. Odyssea reserves the right to raise additional grounds for relief requested herein and to supplement and/or amend this objection.

16. Odyssea, to the extent applicable to its position, adopts such other and additional objections filed by any other party.

WHEREFORE, Odyssea Marine, Inc. respectfully requests that the Court sustain the objection and deny the Debtors' motion to the extent that the Debtors seek relief inconsistent herewith. Odyssea further requests such other and further relief to which it may be entitled in law and equity.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Limited Objection to Emergency Motion for Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition

Superpriority Secured Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Adequate Protection, (IV) Scheduling a Final Hearing, and (V) Granting Certain Related Relief has been served upon the parties listed below via the court's electronic filing or by depositing a copy of same in the United States Mail, postage prepaid and properly addressed, this 2nd day of May, 2017.

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